

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully solicited.

Claims 10 - 19 are pending in the application. Currently, all claims stand rejected.

In the office action of October 8, 2004, claims 10 - 19 were rejected under 35 U.S.C. 112, first paragraph as being non-enabled; claims 10 - 13 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,722,099 to Kratz; claims 14 - 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of U.S. Patent No. 5,593,754 to Blauer et al.; and claims 17 - 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of U.S. Patent No. 2,002,955 to Lipson.

The foregoing rejections are traversed by the present response.

The present invention relates to a garment to be worn by a human being which comprises a front portion and a rear portion and a pair of arms being joined to the front and rear portions. Each of the arms has an outer elbow portion formed from a stretch fabric material and other portions formed from a non-

stretch fabric material. The garment further has underarm portions formed from a stretch fabric material.

The rejection of claims 10 - 19 under 35 U.S.C. 112, first paragraph is believed to be improper and not well taken. The term "non-stretch fabric material" is a term of art which would be well understood by those skilled in the art. For example, it is known in the art that certain woven fiber materials are non-stretch fabric materials. To further demonstrate the usage of the term "non-stretch material", attached hereto are excerpts from the Internet showing the common usage of the term in the clothing art. These excerpts demonstrate that one of ordinary skill in the art would readily be able to produce the garments of the present invention without any undue experimentation. It is submitted that the enablement requirement of 35 U.S.C. 112, first paragraph does not require an applicant to disclose and explain that which is commonly used and well known in the art. See *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984). The Examiner is hereby requested to withdraw this rejection.

With regard to the rejection of claims 10 - 13 on anticipation grounds over Kratz because Kratz lacks an outer elbow portion formed from a non-stretch fabric material. Kratz relates to a motorcycle garment which has vent portions to

maximize cooling. The jacket shown in FIGS. 2 and 3 of Kratz has mesh underarm portions, a mesh inner elbow portion, and mesh portions on the front and back of the jacket. As pointed out in column 5, line 44 et seq., the vents are shaped and position to provide maximum air flow utilizing those areas of the jacket which are least likely to come into abrasive contact with the pavement or other surface during an accident. The elbow vents are provided at the cyclist's inner elbows, because these areas are rarely abraded. To provide adequate protection, the back of the jacket is fabricated from an abrasion resistant material. The only mention of a flexible cloth mesh is for the element 116 which is provided to keep out bugs or other debris which might otherwise pass through the scoop 106. While Kratz says that the jacket may be constructed from natural or artificial leather, Kratz is totally silent as to whether either of these materials is stretchable or non-stretchable. This is because Kratz is indifferent on the subject.

Claim 10 is allowable because Kratz does not teach or suggest forming an outer elbow portion from a stretchable fabric material. Claim 10 is further allowable because Kratz never says that other portions of the arms are formed from a non-stretch fabric material and never says that the underarm portions are formed from a stretch fabric material. The Examiner's position

on these latter points is without any foundation in Kratz. The Examiner assumes that the stretch fabric 116 is used throughout Kratz, but Kratz does not say that. It is not inherent that the mesh of Kratz has any stretch. The sole purpose of the mesh is to provide ventilation which can be accomplished with a non-stretch mesh material. Similarly, the Examiner's statements about the construction of the artificial leather is without foundation in Kratz. If one looks at the stretch marks on the embodiment of FIG. 8, it appears to Applicant that the non-mesh portions of Kratz' jacket are intended to stretch.

With regard to the Examiner's inherency argument, an element of a claim is not inherent in the disclosure of a prior art reference unless extrinsic evidence clearly shows that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by mere probabilities or possibilities. Further, mere fact that certain thing may results from a given set of conditions is insufficient to establish inherency. See *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The Examiner has provided no extrinsic evidence to show inherency. Thus, the Examiner's argument beginning at the last line on page 3 of the office action and continuing to line 6 of page 4 of the

office action does not comply with the requirements of the law. Even if the Examiner is right about the composition of artificial leather, and there is no evidence in support of the statement, there is nothing which indicates that it is a composition being used by Kratz. To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention. See *Atlas Powder Co. v. IRECO Inc.*, 51 USPQ2d 1943, 1945 - 46 (Fed. Cir. 1999). Kratz does not disclose the artificial leather described by the Examiner.

Claims 11 - 13 are allowable for the same reasons as claim 10 as well as on their own accord.

The rejection of claims 14 - 19 on obviousness grounds are duly noted. However, the secondary references to Blauer et al. and Lipson do not overcome the above-noted deficiencies of Kratz.

For the foregoing reasons, the instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, she is hereby invited to contact Applicant's attorney at the telephone number listed below.

No fee is believed to be due as a result of this response.
Should the Commissioner determine that a fee is due, he is
hereby authorized to charge said fee to Deposit Account No.
02-0184.

Respectfully submitted,

Steven D. Culhane

By 

Barry L. Kelmachter

BACHMAN & LaPOINTE, P.C.

Reg. No. 29,999

Attorney for Applicants

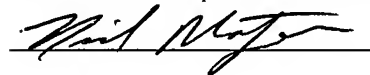
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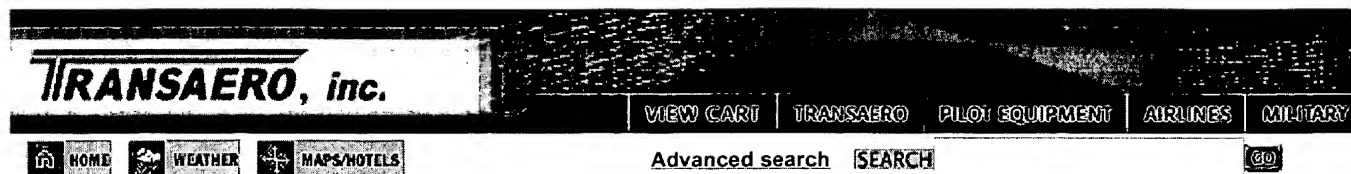
Telefax: (203) 865-0297

Email: docket@bachlap.com

Date: January 7, 2005

I, Nicole Motzer, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on January 7, 2005.






Headquarters: 80 Crossways Park Drive, Woodbury, N.Y. 11797-2045 • Phone: (516) 921-7400 • Fax: (516) 921-7407

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MGS502

Bootliner, Waterproof and
Breathable Knee Length



The Mustang MGS502 Bootliner protects feet from the discomfort and challenges of cold, wet environments. The bootliner is a close fitting, waterproof, moisture vapour permeable liner designed for wear inside operational footwear. The breathable characteristic of the bootliner minimizes perspiration induced wet feet, providing increased comfort and operational efficiency for the wearer. Certain missions may provide circumstances where having wet feet become:

unavoidable, such as traversing deep water. Through continued activity, foot drying occurs as the breathable fabric allows water vapor to pass through to the outside of the liner. Keeping the feet dry improves foot hygiene and greatly reduces incidences of operational foot trauma in cold and wet environments.

The bootliner is specifically designed to provide maximum foot comfort with strategic locations of construction seams to minimize bulk. This results in a smooth and flexible liner which conforms well to the foot, preventing gathering or interference with operational footwear.

The bootliner incorporates both stretch and non-stretch Gore-tex fabric for added wearer comfort. The stretch fabric portion is located around the foot and ankle, ensuring a close fit when worn over a standard woolen work sock. The stretch fabric comprises the upper portion and the sole of the bootliner for durability.

The knee length configuration is designed to prevent water ingress while travelling through moderately deep water and assists in the prevention of pant leg soak and freezing.

Leg adjustment is provided with a Velcro fastener around the upper hem to prevent slippage of the liner over the calf. All seams are fully sealed to ensure 100% watertight construction.

Materials

The bootliner is a bi-component design, utilizing a stretchable laminate fabric for shape conformance over the foot and a non-stretch laminate fabric for durability in high wear areas. The stretch component is a 3-layer waterproof and moisture vapor permeable laminate of nylon-spandex knit, microporous film, and nylon tricot knit conforming to MIL 29567. All construction seams are fully sealed using a laminated waterproof tape.

Size

Thirteen sizes are available, men's size 2 through 14. (Note: Full sizes only)

Weight

Approximately 0.45 kg (1lb.) per pair, depending on size.

Color

Olive green, other colors such as disruptive camouflage pattern are possible where quantity permits.

Testing

All bootliners are individually tested and proven 100% watertight.

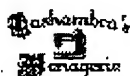
Optional Style

For those operational requirements where the knee length bootliner is considered more coverage than is necessary, the calf length model MGS505 is available. This variant uses the same materials but incorporates a stretch cuff at calf.

Headquarters: 80 Crossways Park Drive, Woodbury, N.Y. 11797-2045
Phone: (516) 921-7400 • Fax: (516) 921-7407
e-mail us at info@transaeroinc.com

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Ehab is a member of *Embroidery Tales mailing list* and he was kind to write up this backing material tutorial for the members so many people would always write in asking these types of questions. Ehab says, "I am writing this information because I r lot of friends asking about backing and topping and here is wha thinking that it might help someone out there."

~~~ Backing Materials ~~~

The use of backing materials and / or toppings will enhance your embroidery. The type of backing needed is determined by the fabric being embroidered. In most cases, backing will be needed to prevent stitches from pulling and distorting the garment. Backing materials give strength to unstable fabrics (and a better appearance on woven fabrics (less puckering and pulling).

Fabrics fit into three general categories

Woven: Non-stretch materials such as satin jackets, towels, denim and can

Knits: Stretch materials such as sweaters, sweatshirts, jerseys and t-shirt

Special: Non-woven, non-knit materials such as fen, leather or suede

Backings are used with all knits and stretch fabrics, as well as with most thir sheer fabrics.

~~~Backing Guidelines~~~

A loose knit fabric can be embroidered, but without selecting proper stitch d and backing, the garment can be stretched and possibly cut. The operator's concern is to keep fabrics from stretching, puckering, or popping through th stitches during sewing. In general, thinner garments need more stable backi

Backings range from very lightweight tear-away to heavyweight cut-away, fr iron-on to non-adhesive. All serve different purposes.

The most universal backings are:

Fun**Interactive Polls****Past Survey's****Interviews****News Page****Cyber Cards****Game Court****Contact****E-Mail****Newsletter**

**Keep
~Updated~
Receive Our
Newsletter**

Good Deeds**A Variety Of
Organizations****Web E-Mail****Log In To:
Embroidery Mail****Sign Up With:
Embroidery Mail****Learn More!**

Counter code has
changed. Please
update your code.



Medium-weight tear-away or cut-away types.

Too much backing is just as bad as not enough.

Use one piece of medium-weight backing or two pieces of light-weight backing as a general rule.

Heavier fabrics generally have a tighter weave and will need less backing.

Backing should be cut to completely fit in the hoop, not just as a strip to fit at the center of the hoop. When dealing with an open weave fabric that you don't want to move or gather, using spray adhesive on the backing will help keep it all two together, adding stability.

~~~Softouch~~~

Softouch is a woven backing material made of 100% non-shrinkable polyester. Softouch backing is used with many knits and stretch fabrics. These materials cannot be pulled tightly in a hoop by themselves because they will stretch out of shape. Softouch is used to add stability to the garment while it is being sewn. Without Softouch backing, knits will not hold the stitching and can even be fed down into the hole in the throat plate.

To use Softouch backing, cut a piece slightly larger than the hoop you are using and place it underneath the area of the garment that is going to be monogrammed.

Hoop the garment as usual, using the backing material as though it were part of the garment.

Make sure that the garment is as smooth and snug as possible in the hoop. You may wish to use a dissipating bonding adhesive spray to bond the backing to the garment for better stability.

Cut away the excess backing after embroidering, leaving a small margin around the embroidery. Do not cut the backing between letters and designs. Leaving it in place gives added stability to the embroidery after laundering.

Softouch can also be used with thinner woven fabrics to give better clarity and detail to intricately embroidered designs.

~~~Tear-away~~~

Tear-away is a non-woven material that provides some of the stability of Softouch but can be torn away like paper. It is used with non-stretch fabrics. It is hooped the same manner as Softouch, but it is not strong enough for heavier knits or stretchy materials.

Tear-away gives body to thin materials and is well suited for nylon jackets, blouses, sheets, etc. It will help reduce puckering and pulling on these fabrics.

~~~Cut-away~~~

Cut-away backings include a large assortment of fabrics: heavy non-wovens, woven cotton buckram and woven nylon polyester.

A cut-away backing is a fuller product and provides more support than tear-away backing. Cut-away backings are generally more expensive but are more popular with experienced operators.

~~~Nylon Backing~~~

Nylon backing is used with many knits and stretch fabrics. Use nylon as a substitute for Softouch if the design is not worn against the skin.

Hooing procedures for nylon are identical to those for Softouch backing.

~~~Backing Paper~~~

Backing paper is used beneath fabrics with a looped or rough texture, e.g., terry or canvas, and with garments that have a rubber lining, e.g., rain slickers or waterproof bags.

This allows the hooped garment to move smoothly while sewing, decreasing chance of dragging.

The backing paper is not put in the hoop with the material, but is placed under the hoop, between the garment and the sewing surface. When the embroidery is finished the paper can be pulled away.

CAUTION!

Backing paper has a tendency to shred during sewing, small pieces of paper get caught in the hook and jam the machine. Be sure to clean away all excess pieces of paper that may be left after embroidering.

~~~Water Soluble Topping~~~

Water soluble plastic foil is used as a topping to prevent stitching from getting in knit fabrics, keep terry cloth loops down, and to allow greater clarification of intricate details.

Using Water Soluble Topping

1. Place water soluble topping on top of the fabric and hoop both.
2. After the embroidery process is complete, tear away the water soluble topping outside the design.
3. Spritz very lightly with warm water to dissolve water soluble topping.
4. A soft bristle brush may be used to help remove remaining water soluble topping particles. Pass the brush lightly over the top of embroidery to raise the fabric.

Embroidery should not be left damp or wet longer than a few minutes.